

Judge G'Toole
USDC MAWO
05-40063

MANDATE
United States Court of Appeals
For the First Circuit

No. 06-1863

COY PHELPS,
Plaintiff, Appellant,
v.

ALBERTO R. GONZÁLES, ATTORNEY GENERAL, ET AL.,
Defendants, Appellees.

Before
Torruella, Selya and Howard,
Circuit Judges.

JUDGMENT

Entered: October 4, 2006

Appellant, Coy Phelps, appeals from the judgment of the United States District Court for the District Court of Massachusetts dismissing his complaint on the ground that he lacked standing to represent the members of the class named in the complaint--a heterogenous group consisting of several thousand mental patients hospitalized pursuant to 18 U.S.C. §§ 4243 & 4246 in various federal facilities. Appellees ("the government") move for summary disposition.

Having conducted a de novo review of the issue, we agree with the district court. Appellant fails to meet the standard for jus tertii standing. See Kowalski v. Tesmer, 543 U.S. 125, 130 (2004). The mere fact that appellant is, himself, hospitalized pursuant to 18 U.S.C. §§ 4243 is not enough to establish a close relationship with the members of the putative class, but it is enough to undercut his claim that the individual class members are hindered from bringing a claim such as this one. See id.

Thus, we agree with the government that this case presents no

substantial question, and we disagree with appellant that the government's filing of the instant motion for summary disposition was a mere dilatory tactic. Accordingly, we AFFIRM the judgment of the district court. See 1st Cir. Loc. R. 27(c).

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

**Certified and Issued as Mandate
under Fed. R. App. P. 41,**

Richard Cushing Donovan, Clerk

M. P. [Signature]
Deputy Clerk

11/28/06

[cc: Coy Phelps, Michael Sullivan, USA, Jennifer Boal, AUSA]